

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)
)
 IONE BAND OF MIWOK INDIANS) ULS File No. 0009176845
)
 Request for Waiver of Tribal Land Definition in)
 the 2.5 GHz Tribal Priority Window)

MEMORANDUM OPINION AND ORDER

Adopted: January 19, 2021

Released: January 19, 2021

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On August 7, 2020, the Ione Band of Miwok Indians (Ione Band or the Tribe) submitted a request for waiver of section 27.1204(b)(2) of the Commission’s rules,¹ which defines eligible Tribal lands for purposes of the 2.5 GHz Rural Tribal Priority Window (Tribal Window) in relevant part as “any federally recognized Indian Tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see §54.400(e) of this chapter, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the State of Hawai’i, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, et seq., as amended.”² In this *Memorandum Opinion and Order*, we grant Ione Band’s Waiver Request because it meets the Commission’s waiver standard.³

II. BACKGROUND

2. In July 2019, the Commission approved an order modernizing the portion of the 2.5 GHz band formerly known as the Educational Broadband Service.⁴ Among other things, the order created a Rural Tribal Priority Window during which eligible Tribal entities could apply for licenses for currently unassigned 2.5 GHz spectrum. To obtain a license in the Rural Tribal Priority Window, an applicant must meet four requirements. First, the applicant must be an eligible entity, which the rule defines as a “federally recognized American Indian Tribe or Alaska Native Village; or an entity that is owned and controlled by a federally-recognized Tribe or a consortium of federally-recognized Tribes.”⁵ Second, the applicant must apply for eligible Tribal lands, as defined in section 27.1204(b)(2) of the Commission’s rules.⁶ Third, the eligible Tribal lands must be in a rural area, which is defined as “lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000.”⁷ Finally, the

¹ File No. 0009176845 Ione Band of Miwok Indians, Petition for Waiver (Waiver Request).

² See 47 CFR § 27.1204(b)(2).

³ See 47 CFR § 1.925(b)(3).

⁴ *Transforming the 2.5 GHz Band*, Report & Order, 34 FCC Rcd 5447 (2019) (*2.5 GHz Report & Order*).

⁵ See 47 CFR § 27.1204(b)(1). This limitation to federally recognized Tribes is consistent with Commission precedent in other contexts. See *2.5 GHz Report & Order*, 34 FCC Rcd at 5464, para. 49.

⁶ See 47 CFR § 27.1204(b)(2).

⁷ 47 CFR § 27.1204(b)(3).

applicant must have a local presence on the eligible Tribal lands for which it is applying.⁸

3. Recently, the Commission denied a petition for reconsideration seeking adoption of the broader definition of Tribal lands contained in part 73 of our rules, which includes off-reservation trust lands, in the Tribal Window.⁹ Specifically, “[t]he Commission required the direct participation of Tribal governments, or entities owned and controlled by such Tribes, in the 2.5 GHz context to ensure that licensees would have the requisite authority over the deployment of facilities and service on their rural Tribal lands.”¹⁰ The Commission recognized, however, that there might be “exceptions to the general rule” where case-by-case waivers would be appropriate allowing for the licensing of off-reservation lands in the Tribal Window.¹¹

4. The Ione Band is a federally recognized Tribal Nation located in Amador County, a rural community in the Northern Sierra Foothills of California.¹² On March 20, 2020, shortly after the window opened, the Bureau of Indian Affairs placed 220 acres of land in Amador County in trust for the Tribe.¹³ The Ione Band describes “those 220 acres as the Tribe’s official, federally recognized land base.”¹⁴

5. The Ione Band filed an application in the Tribal Window on August 7, 2020 seeking a license for its 220 acres of trust lands, along with its Waiver Request.¹⁵ According to the Tribe, much of Amador County, including the Tribe’s trust lands, lacks broadband infrastructure and reliable broadband service.¹⁶ The Ione Band asserts it is creating a comprehensive plan to develop the trust lands, “including plans to deploy a robust and reliable tribal wireless broadband network. . .”¹⁷

6. The Ione Band’s application was accepted for filing on November 10, 2020.¹⁸ No petitions to deny or objections were filed against the application.

III. DISCUSSION

7. The Commission may grant a request for a waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly

⁸ 47 CFR § 27.1204(b)(4). On January 6, 2020, the Wireless Telecommunications Bureau (Bureau) released a Public Notice setting forth the process for submitting applications in the 2.5 GHz Rural Tribal Priority Window, including details regarding demonstrating compliance with the eligibility requirements and requests for waiver. *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, Public Notice, 35 FCC Rcd 308 (2020).

⁹ See *Transforming the 2.5 GHz Band*, Order on Reconsideration, FCC 20-183 (rel. Dec. 17, 2020) (*Reconsideration Order*) at para. 22.

¹⁰ *Id.*

¹¹ *Id.* at para. 23.

¹² Waiver Request at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ File No. File No. 0009176845 (filed Aug. 7, 2020).

¹⁶ Waiver Request at 2-3.

¹⁷ *Id.*

¹⁸ *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 35 FCC Rcd 12850 (WTB 2020).

burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁹ Here, we find that Ione Band's showing meets the first prong of the Commission's waiver standard. Accordingly, we grant a waiver of section 27.1204(b)(2) of the Commission's rules to allow licensing of the trust lands specified in the application.

8. "The Commission established a Tribal Priority Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas."²⁰ In this instance, we find that strictly applying the Tribal lands definition would be inconsistent with the Tribal Window's purpose of providing wireless communications services in rural Tribal areas. First, we find that the Ione Band have shown that the trust lands in question are held for the specific benefit of the Tribe, and the Tribe's authority over the lands is adequately demonstrated by the fact that the Tribe is actively planning to develop the land. We find that, based upon the showing made by Ione Band, treating this undisputedly rural land as eligible Tribal land under the Tribal Window would be consistent with the Tribal Window's purpose.²¹ We note that the lands in question are areas within the Tribe's current, demonstrated authority. In particular, we find that a waiver would be in the public interest because the Ione Band have demonstrated plans to use the spectrum to provide wireless broadband service on lands specifically held in trust for the Tribe.

9. Because the trust land parcel in question is small – 220 acres – the Ione Band will have to be careful to ensure that any system it deploys complies with our technical rules. In particular, our rules for the 2.5 GHz band limit the field strength that can be radiated at the border of a licensee's service area.²² Also, a licensee's entitlement to interference protection is dependent on its compliance with the height benchmark, which is dependent on the height of the antenna and the distance to another licensee's geographic service area.²³ Absent agreements with neighboring licensees or a waiver of those rules, the Ione Band must comply with those rules.

10. We note that our decision here is limited to the suitability of these specific trust lands to be found as eligible Tribal lands under the Tribal Window. We make no determination as to the status of these trust lands with respect to other Commission rules or programs, nor for any other purpose.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 303(c), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 309(a), and section 1.925(b)(3) of the Commission's Rules, 47 CFR § 1.925(b)(3), that the waiver request filed by the Ione Band of Miwok Indians on July 24, 2020 IS GRANTED, and section 27.1204(b)(2) of the Commission's rules IS WAIVED to allow licensing of the lands specified in the application.

12. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and section 27.1204 of the Commission's rules, 47 CFR § 27.1204, that the licensing staff of the Broadband Division SHALL PROCESS the application filed by the Ione Band of Miwok Indians for a new 2.5 GHz license (File No. 0009176845) in accordance

¹⁹ 47 CFR § 1.925(b)(3).

²⁰ *Reconsideration Order* at para. 4.

²¹ The Commission has noted that the problem of lack of communications is particularly acute on rural Tribal lands. *See 2.5 GHz Report and Order*, 34 FCC Rcd at 5466, para. 56; *see also Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2020 Broadband Progress Report, 35 FCC Rcd 8986, 9013, para. 47 (2020) ("Rural Tribal lands continue to lag behind urban Tribal lands, with only 52.9% of all Tribal lands in rural areas having deployment of both [fixed and mobile broadband] services, as compared to 93.1% of Tribal lands in urban areas").

²² *See* 47 CFR § 27.55(a)(4).

²³ *See* 47 CFR § 27.1221.

with this *Memorandum Opinion and Order* and the Commission's rules and policies.

13. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale, Jr.
Chief, Wireless Telecommunications Bureau